

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

www.spb.ca.gov

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES

OCTOBER 16, 2001

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

Ron Alvarado, President
William Elkins, Vice President
Florence Bos, Member
Richard Carpenter, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. The Sacramento Bee interviewed staff in connection with a recent article on the implementation of the Dymally-Allatorre Bilingual Services Act.
- B. At the request of the Governor's Office, the Board, along with other state agencies, will be preparing contingency plans for a 15% General Fund budget reduction.
- C. Staff will be meeting with southern California ecumenical leaders to discuss the responsibilities of the Board.

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on:

Pending Litigation:

- A. IUOE v. State of California, State Personnel Board (SPB) before Public Employment Relations Board - Judge Blubaugh has twice denied IUOE's request to reconsider his decision to dismiss the complaint issued against SPB. IUOE has been granted an extension of the time deadline to appeal Judge Blubaugh's decision to the full Board. Their appeal is now due November 15, 2001.
- B. Connerly v. SPB - The real parties in interest did not file a petition for review with the California Supreme Court. The petition was due October 15, 2001. We are unaware at this time as to whether Mr. Connerly has filed a petition.
- C. Professional Engineers in California Govt. v. SPB California Supreme Court has denied the petition for review in this case.
- D. Connell v. CalPERS - SPB is not a party to the case. The superior court confirmed its tentative ruling that Proposition 162, which provides CalPERS with authority for administering the retirement system assets, does not relieve CalPERS from complying with civil service, salary, and payroll laws.

4. REPORT ON LEGISLATION - Judy Balmain

The Board was advised of the following legislation signed by the Governor:

- A. AB 647 (Horton) Chapter 416/01 amends the reporting by Community College Employees of Improper Governmental Activities Act to permit community college employees and applicants for community college employment to file whistleblower retaliation complaints with the State Personnel Boards opposed to local law enforcement agencies.
- B. AB 1015 (Wright) Chapter 820/01 amends the Labor Code to protect employees against employment retaliation. The bill specifies that its provisions will not apply to

state employees. This bill no longer impacts State Personnel Board (SPB) operations.

- C. SB 413 (Speier) Chapter 883/01 among other amendments the more significant changes are:
 - 1. No longer does a complaint have to be filed with the State Auditor's Office to be the subject of a whistleblower retaliation appeal at SPB
 - 2. Someone who proves whistleblower retaliation may recover compensatory damages before the SPB.
 - 3. The changes conforms the shifting burden of proof to that which applies under the whistleblower retaliation law.
- D. SB 1191 (Speier) Chapter 745/01 the bill, modifies or deletes State and local reporting requirements that are submitted to the Legislature and the Governor. SB 1191 modifies the reporting language Section 19793 of the Government Code that address equal employment opportunities.
- E. The State Personnel Board voted on the following:

The Board voted to withdraw the proposed legislation that would have deleted the requirement that the Board prepare a report on the classes that qualify for safety membership.

VOTE: Alvarado, Bos, Carpenter, Elkins - Aye.

BOARD ACTIONS

- 5. STATE PERSONNEL BOARD SUMMARY MINUTES OF OCTOBER 2, 2001

ACTION: Adopted on October 16, 2001.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

- 6. ADMINISTRATIVE LAW JUDGE CASES

On October 16, 2001, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PROPOSED DECISIONS

OSCAR MARTINEZ, CASE NO. 01-0339E
Appeal from retaliation
Senior Youth Correctional Counselor
Department of the Youth Authority
ACTION: Complaint of retaliation denied

MICHAEL SCHWENGLER, CASE NO. 01-0779
Appeal from ten percent reduction in
salary for six months
Correctional Officer
Salinas Valley State Prison
Department of Corrections
ACTION: Ten-percent reduction in salary for six months
sustained

DENNIS E. SCHWETTMANN, CASE NO. 01-1883
Appeal from demotion
Supervisor of Academic Instruction to the
position of Academic Instructor,
Centinela State Prison
Department of Corrections
ACTION: Modified to temporary demotion for two years

MARK SKAGGS, CASE NO. 01-1808
Appeal from temporary demotion
Correctional Lieutenant to the
position of Correctional Sergeant
North Kern State Prison
Department of Corrections
ACTION: Temporary demotion revoked

RUSSELL, ULREY, CASE NO. 01-1849
Appeal from five percent reduction
in salary for six months
Correctional Officer
Wasco State Prison
Department of Corrections
ACTION: Five-percent reduction in salary for six months
revoked

MARALEE VALTAKIS (MILLER), CASE NO. 00-4260
Appeal from ten percent reduction
in salary for twelve months
Youth Correctional Officer
Department of the Youth Authority
ACTION: Ten-percent reduction in salary for twelve months
modified

ROBERT BRECKENRIDGE, CASE NO. 00-1847
Appeal from retaliation
Correctional Sergeant
Department of Corrections
ACTION: Complaint of retaliation dismissed

PETITIONS FOR REHEARING

MARC E. ROBERTSON, CASE NO. 00-0434P
Appeal for retaliation
Correctional Sergeant
San Luis Obispo, State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellant denied

DAVID RENTERIA, CASE NO. 00-1833P
Appeal from ten working days suspension
Officer
Department of California Highway Patrol
ACTION: Petition for rehearing filed by Appellant denied

STEPHANIE RODRIGUEZ, CASE NO. 99-5150P
Appeal from 120 working days suspension
Office Technician (Typing)
Pleasant Valley State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellant granted

DARRELL SNELL, CASE NO. 00-0002P
Appeal from 180 working days suspension
Correctional Sergeant
Pleasant Valley State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellant granted

RENEE VILLARREAL, CASE NO. 00-0030
Appeal from 140 working days suspension
Health Records Technician II (Supervisor)
Pleasant Valley State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellant granted

WAYNE VILLARREAL, CASE NO. 00-0033
Appeal from 180 working days suspension
Correctional Sergeant
Pleasant Valley State Prison
Department of Corrections
ACTION: Petition for rehearing filed by Appellant granted

7. RESOLUTION RE NOTICE OF GOVERNMENT CODE SECTION 18671.1
EXTENSION.

ACTION: See pages 12-15.

8. WITHHOLD APPEALS
On October 16, 2001, the Board adopted the following
decisions presented by Walter Vaughn, Executive Officer,
California State Personnel Board.
VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

PAULO BERMUDEZ, CASE NO. 01-0454
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NORMAN W. HOWELL, CASE NO. 00-4170
Classification: Correctional Counselor I
Department of Corrections
ACTION: GRANTED

ROGELIO PEREIRA, CASE NO. 00-4086
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

9. MEDICAL APPEALS

On October 16, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

DEBRA KELLY, CASE NO. 01-0499
Classification: Correctional Officer
State Personnel Board
ACTION: DENIED

MICHAEL RIGGS, CASE NO. 01-2026
Classification: Cadet, CHP
State Personnel Board
ACTION: DENIED

SCOTT SWANSON, CASE NO. 00-3513
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

SCOTT WALKER, CASE NO. 01-0805
Classification: Cadet, CHP
State Personnel Board
ACTION: DENIED

ANDREW DIMARIA, CASE NO. 01-0540
Classification: Psychiatric Technician Trainee
Department of Developmental Services
ACTION: DISMISSED

LUCIANO ORTIZ, CASE NO. 01-2712
Classification: Correctional Officer
Department of Corrections
ACTION: DISMISSED

10. EXAMINATION APPEALS

MINIMUM QUALIFICATIONS - NONE

MERIT ISSUE COMPLAINTS

On October 16, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

(Examination)

WILLIAM YATES, CASE NO. 99-1674

Classification: Air Resources Supervisor II

Air Resources Board

ACTION: DENIED

(Merit Issue Complaint)

MARY GUINN, CASE NO. 01-0717

Classification: Office Assistant (T)

Department of Corrections

ACTION: DISMISSED

11. RULE 212 OUT-OF-CLASS APPEALS - NONE

VOIDED APPOINTMENT APPEALS

RULE 211 APPEALS - NONE

On October 16, 2001, the Board adopted the following decisions presented by Walter Vaughn, Executive Officer, California State Personnel Board.

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.

(Voided Appointment)

MARGARET SAN ROMAN, CASE NO. 01-0815

Classification: Office Assistant (G)

Employment Development Department

ACTION: DENIED

12. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) DEPUTY DISTRICT DIRECTOR, ENVIRONMENTAL PLANNING
(3 positions)

The Department of Transportation proposes to allocate the above positions to the CEA category. The Deputy District Director (DDD), Environmental Planning is responsible for managing all aspects of Environmental Planning and Management; Biological Studies; Environmental Studies; Cultural Studies; Habitat Conservation; and the Environmental Engineering Program toward directing the future of transportation projects in the District. The department indicates that the

position is at the third organizational level and will report to the District Director.

- (2) DIRECTOR, PROBLEM RESOLUTION OFFICE
The Franchise Tax Board proposes to allocate the above position to the CEA category. The mission of the Problem Resolution Office (PRO) is to resolve operational, program and system problems affecting departmental customers and facilitate the development of management practices, policies and procedures needed to provide long-term solutions to customer issues. The department indicates that the position is at the second organizational level and will report to the Executive Officer and Assistant Executive Officer of the Operations and Enterprise Technology Branch.
- (3) CHIEF, BUSINESS PROGRAMS ADMINISTRATION
The Secretary of State's Office proposes to allocate the above position to the CEA category. Under general direction the Chief, Business Programs Division (BPD) oversees the development and implementation of the BPD's E-government automation projects reengineering the outdated automated and manual processes of business billings. The department indicates that the position is at the third organizational level and will report to the Chief, Business Programs.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO ESTABLISH NEW CEA POSITIONS

- (1) DIRECTOR, OFFICE OF HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPPA) IMPLEMENTATION
The Department of California Health and Human Services Agency's request to allocate the above position to the CEA category has been approved effective September 26, 2001.
- (2) PROJECT MANAGER, INTEGRATED CONTINUOUS BUDGET SYSTEM (ICBS)
The Department of Finance's request to allocate the above position to the CEA category has been disapproved, September 27, 2001.
- (3) BUSINESS PROJECT MANAGER, REVENUE DATABASE CONSOLIDATION

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The Board of Equalization's request to allocate the above position to the CEA category has been disapproved, September 27, 2001.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. RICHARD C. TOBY, CASE NO. 00-1572P. Appeal from dismissal. Department of Developmental Services. (Oral argument held July 10, 2001).

NO ACTION

2. PAUL RODRIQUEZ, CASE NO. 00-1580. Appeal from demotion. Department of Corrections. (Oral argument held September 6, 2001).

NO ACTION

3. GERARDO Z. HERNANDEZ, CASE NO. 00-3706. Appeal from five-percent reduction in salary for six months. Department of Corrections. (Oral argument October 2, 2001).

NO ACTION

4. RONALD GONZALES, CASE NO. 01-0220. Appeal from 15 working days suspension. Department of California Highway Patrol. (Oral argument October 2, 2001).

NO ACTION

5. D. KIRK SANDEEN, CASE NO. 00-3024P. Appeal from constructive medical termination. Department of California Highway Patrol. (Written material presented October 2, 2001).

NO ACTION

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on October 16, 2001.

WALTER VAUGHN
Executive Officer
California State Personnel Board

VOTE: Alvarado, Elkins, Bos, Carpenter - Aye.